

JOHN V. POTTER, JR., ET AL.

IBLA 95-569R

Decided February 25, 1999

Appeal from three Bureau of Land Management decisions declaring unpatented mining claims abandoned and void for failure to pay annual rental fee payments or to qualify for exemption from the fees. MMC 12077 et al.

Request for reconsideration granted, IBLA decision vacated, BLM decisions reversed.

1. Mining Claims: Abandonment–Mining claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

An applicant for a small miner exemption from payment of rental fees under the Act of Oct. 5, 1992, must file a certified statement by Aug. 31, 1993, for each of the assessment years (ending Sept. 1, 1993, and Sept. 1, 1994) for which the exemption is claimed, including the information required by 43 C.F.R. § 3833.1-7(d). Where the applicant files a certificate of exemption rather than pay the rental fee for both of the assessment years in issue, satisfies the regulatory requirement that assessment work on behalf of the unpatented mining claims was performed on a contiguous patented mining claim, and where the applicant is operating under a valid State mining permit on the patented claim, there is no requirement to file a notice of intention to operate or a plan of operations with BLM for the unpatented mining claims.

John V. Potter, et al., 145 IBLA 384 (1998), vacated.

APPEARANCES: John V. Potter, Jr., Esq., White Sulphur Springs, Montana, pro se, and for Appellants.

OPINION BY ADMINISTRATIVE JUDGE TERRY

In John V. Potter, Jr., et al., 145 IBLA 384 (1998), decided September 24, 1998, the Board affirmed three separate June 12, 1995,

Decisions of the Montana State Office, Bureau of Land Management (BLM), declaring, in each Decision, 10 separate unpatented mining claims abandoned and void for failure to pay, on or before August 31, 1993, the annual rental fee payment of \$100 per claim or to qualify for exemption from the fee, as required under the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), Pub. L. No. 102-381, 106 Stat. 1374, 1378-79 (1992), and 43 C.F.R. § 3833.1-6 (1993). In this case, exemptions were denied by BLM because Appellants failed to file a notice of intent or plan of operations on the unpatented mining claims, which were located on U.S. Forest Service lands. Appellants have filed a Request for Reconsideration.

In their Request for Reconsideration (Request), Appellants claim that they fall within the provisions 43 C.F.R. § 3833.1-6(a)(4)(iv) (1993) (rather than § 3833.1-6(a)(4)(ii), as determined by BLM), that assessment work on behalf of the unpatented mining claims was performed on a contiguous patented mining claim on behalf of the group of contiguous claims; and that they had no obligation to file a notice of intent or plan of operations under 43 C.F.R. § 3833.1-6(a)(4)(ii), as determined by BLM, because they were operating under a valid State mining permit. In their Request, Appellants also sought a Stay of Decision of Abandonment, which we granted in an Order dated November 20, 1998.

[1] An applicant for a small miner exemption from payment of rental fees under the Act must file a certified statement by August 31, 1993, for each of the assessment years (ending September 1, 1993, and September 1, 1994) for which the exemption is claimed, including the information required by 43 C.F.R. § 3833.1-7(d). Where the applicant files a certificate of exemption rather than pay the rental fee for both of the assessment years in issue, and satisfies the regulatory requirement that assessment work on behalf of the unpatented mining claims on Forest Service land was performed on a contiguous patented mining claim, there is no requirement to file a notice of intention to operate or a plan of operations with BLM for the unpatented mining claims where the applicant is operating under a valid State mining permit on the patented claim. 43 C.F.R. § 3833.1-6(a)(iv) (1993).

The two provisions at issue—the first embraced by BLM and the second by Appellants—provide:

(a) In order to qualify for an exemption from the rental fee requirements, a small miner shall meet all the following conditions:

* * * * *

(4) The mining claims shall be under:

* * * * *

(ii) A Notice or a Plan of Operations issued under parts 9 and 228 of Title 36 of the Code of Federal Regulations for National Park System lands and National Forest System lands respectively; or

* * * * *

(iv) A State or local authority mining or reclamation permit if the surface estate of the mining claim is not in Federal ownership.

43 C.F.R. §§ 3833.1-6(a)(4)(ii), (iv) (1993) (emphasis supplied). Appellants claim that since they had a mining permit from the State of Montana for the patented mining claim upon which the assessment work was performed, they fell within § 3833.1-6(a)(4)(iv) above, and not (a)(4)(ii). They cite 43 C.F.R. § 3851.1(c) which provides that where a group of lode claims are held in common and cover the same mineral deposit the assessment work may be performed on one or several claims of the group when it will benefit the development of the claim block as a whole. Appellants claim their assessment work on the patented mining claim met state law requirements for those contiguous unpatented claims on Forest Service land as required by 43 C.F.R. § 3833.1-6(a)(4)(iv). They quote Montana Code Annotated § 82-2-103(2), which provides, in pertinent part:

(2) Annual assessment work may be performed or caused to be performed at one or more points within a group of contiguous claims and may be utilized to satisfy annual assessment work requirements upon the group of contiguous claims. Said point or points of work may be performed upon a patented claim.

BLM's Decisions cited the failure to satisfy the notice of intention to operate or plan of operations as the only impediment to granting Appellants' requested exemption under the Act. Appellants have claimed in their Request that they fall within the exception provided in § 3833.1-6(a)(4)(iv) of the regulation in that they were operating under a State permit and that adequate assessment work was performed on the contiguous patented claim on behalf of the unpatented claims.

In their Statement of Reasons filed in support of appeal, Appellants stated the assessment work they performed on the patented claim was covered by Operating Permit 00071 issued by the State of Montana. However, they did not provide a copy of the current permit or a description or map of the location of the patented claim and the claims covered by BLM's June 12, 1995, Decisions.

We therefore requested, in our November 20, 1998, Order, that Appellants support their Request by providing us a copy of their current State permit and a description or map showing its relation to the claims located on Forest Service lands. The Appellants have timely satisfied our request

and have established, to our satisfaction, that they were, in fact, operating under a valid State mining permit and that adequate assessment work was performed on the contiguous patented claim on behalf of the unpatented claims. Despite our request, BLM did not file an Answer to Appellants' Request for Reconsideration.

We are satisfied that Appellants' claims fall within the exception provided in § 3833.1-6(a)(4)(iv) of the regulation in that they were operating under a valid State mining permit and adequate assessment work was performed on the contiguous patented claim on behalf of the unpatented claims on Forest Service land. For this reason, they had no obligation to file a notice of intent or plan of operations under 43 C.F.R. § 3833.1-6(a)(4)(ii), as determined by BLM.

Therefore, pursuant to the authority provided to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Request for Reconsideration is granted. The Decision in this matter dated September 24, 1998, at 145 IBLA 384 (1998), is vacated. The three separate June 12, 1995, BLM Decisions declaring Appellants mining claims abandoned and void are reversed.

James P. Terry
Administrative Judge

I concur.

Will A. Irwin
Administrative Judge

